

**RIGHT OF WOMEN IN CONSTITUTIONS OF
NIGERIA 1960-2007**

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CERTIFICATION

This is to certify that this project was carried out by **Oshosanwo Tumininu Azeezat**, with the Matric number **18012213005** with the combination HIS/SOS from the School of Arts and Social Sciences, Tai Solarin College of Education, Omu-Ijebu.

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DEDICATION

This work is dedicated to Almighty God, who is the giver of knowledge, who made it possible for me to be alive during the course of this study and He has been the source of my inspiration for giving me wisdom, knowledge and understanding to complete this work.

This work is also dedicated to my parents Mr and Mrs Oshosanwo. I pray they eat the fruit of their labour.

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ABSTRACT

The consensus in modern democracies is that constitutions should be based on inclusivity. However, the Nigerian constitution is replete with provisions which are interpreted to either deny the realities of women or outright discriminate against them. This study examines the right of women in constitutions of Nigeria 1960-2007. It argues that women have played a minimal role in the history of constitution making. The inclusion and interpretation of equality; non-discrimination; negative vs. positive rights and gender quotas are biased. The research posits that a conscious effort to give women presence in the polity started in the Nigerian.

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CHAPTER ONE

INTRODUCTION

Background to the Study

Women represent about half of Nigeria's population¹, but occupy less than 10 percent of political positions. This affects their capacity to influence the domestication of instruments that protect their rights. The main reason is patriarchy that prevails in most Nigerian communities despite the country having acceded to international human rights treaties that promote gender equality. Gender inequality permeates every level of Nigerian society, including the political sphere¹.

This gender stratified society assigns rights and responsibilities on the basis of physiological differences between men and women. Men are believed to be physically stronger than women and are expected to be involved in physical activities and more labor oriented tasks. Furthermore, women are seen to be emotionally driven while men are more goal-oriented². Consequently, women are considered to be fit for domestic and reproductive roles while men are regarded as traditional heads of households and wield enormous decision making powers³.

Women's lack of participation in legislative processes has negatively impacted promotion and enforcement of their rights. An example is the Gender and Equal Opportunity Bill which was presented at the Nigerian Senate for a second reading on 15th March, 2016 and was rejected. One could argue that one of the reasons why the Bill was not passed is because only seven of the 109 senators are women.

Men's efforts, if any, to promote these rights are not sufficient, because they are not direct beneficiaries⁴.

This study is written in view of the growth of the waves of feminism, which pay special attention to women's rights within the society that is more or less gender insensitive⁵. It is following the regard of women as human legal entities who or which are endowed by nature or by law with the capacity to enter into legal relations such as contracts of employment, commercial contracts and marriage contracts without detraction from social constraints⁶. Thus this study is concerned with the sum total of rights and duties concerned with the women as provided in the constitution by reason of their legal affiliation to the state-Nigeria.

Rights, as used in this regard, are privileges or prerogatives that are conferred on a person or a group by law. In other words, they are lawful claims, which the state defined and is ready to protect⁷. Rights (both political and civil rights) according to Olakanmi Olajide, are fundamental freedom which all men and women, are entitled, without discrimination. These, he further noted, are based on the laid down philosophy of the international law which reads: "all human beings are born free and equal in dignity and rights".

The issue of women's rights is an age-long contest in a male-dominated society like Nigeria. Evidence of old tradition and myths of human existence have often given a place of eminence of men to the detriment of women¹³. In treating the issue of women's status or right, modernization theory reflects a general assumption about development which is viewed as a linear, cumulative process and diffusionist in nature¹⁴.

Statement of the Problem

Notwithstanding the provisions of the 1999 Constitution and several International and Regional treaties such as the International Covenant on Civil and Political Rights (ICCPR), the Convention On the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Protocol to the Africa Charter on Human and People's Rights on the Rights of Women in Africa; discrimination and violations of women's rights still occupying in Nigeria. Women are discriminated against in the area of politics, decision-making and other spheres; Nigeria is still one of the countries with the highest maternal mortality rate in the world; violence against women exist both in the private and public lives and there are still discriminatory laws that violate the rights of women in our law books.

Objectives of the Study

The aim of this research is to investigate the right of women in constitutions of Nigeria 1960-2007. The specific objectives of this study are as follows;

- To examine the historical background of women in constitution making
- To know the impact of women political participation
- To examine the gender inequality in Nigeria constitution

Significance of the Study

This study will be beneficial to students, educational administrators and to those that are not aware of right of women in making constitution, most especially in Nigeria. Also, this study will be helpful for further research on the topic in another country.

Scope of the Study

This study will look deeply into the right of women in constitution of Nigeria since 1960 till 2007.

Methodology

Historical methodology will be adopted. This research work will be carried out using secondary source like textbooks, journal, articles as well as internet materials and also primary source which is oral interview.

Literature Review

Gender is ingrained in everyday social processes involving individuals and society as a whole. The law has contributed in the entrenchment of gender, and since the constitution is the organic law of the country, this section considers the intersections of gender, law and constitution. Feminists argue that from the very origins of law, men and women were given different status, with the latter being subordinate. The proponents of natural law made a distinction between men and women based on the perceived physical superiority of men.

Hence, they did not effect any positive change in the status of women. Legal positivists define the law as the sum total of the commands of a sovereign; the implication being that since the rules would have been laid down anyway, it forecloses the opportunity for probing the morality of the law or evaluating its differential impact on men's and women's lives. Because the law did not regulate the private sphere, which mainly affects women, it reinforced the subordination of women in society. Legal realists such as Oliver Wendell Holmes state that the law entails the prophecies of what the courts will do, as against what a statute says (Freeman 2011).

According to Karibi Whyte, the Nigerian constitution is the *fons et origo* (source and origin) of all rights within the polity as well as the *grundnorm* (fundamental norm). Arguably, since the law is gendered, the constitution, which is the fundamental law of the country, is also gendered. This article asserts that, as it is with law generally, the same influences, parameters, silences and acquiescence are involved in the drafting as well as the contents of the constitution. Deutsch makes an urgent call for the undoing of gender and gender relations, arguing that this can be done by dismantling the structure of gender inequalities in society. According to Dahl, law as an institution to a large extent contributes to the maintenance of traditional male hegemony in society. At the same time, the law is fertile for the cultivation of rules which can provide the foundation for vast changes (Atsenuwa 2001). In other words, the law can be used to deconstruct gender.

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CHAPTER TWO

The Concept and Development of Rights

“Human rights” is one of the most important concepts in our modern era. Activists, governments, and corporations use it to draw on a collective understanding that all people deserve certain rights and freedoms. No matter who a person is, where they’re from, what they believe, or how they live, everyone has rights that cannot be taken away¹.

Advocate of the various conceptions of human rights are in agreement that the state should guarantee such rights to the individual. Therefore following the American and the French examples most countries now recognize individual rights in their constitutions. Bills of right have become part of the constitutions of practically all European States.

Though in unwritten form, customary law recognized and protected human rights in Nigeria. Even before the British, the local communities accepted the protection and recognition of human rights as the guiding principle of inter-personal relationship. But when Nigeria became a colony there have been a lot of modifications of the position of human right under the customary law of the people. Judicial decisions have frowned at any customary law that violates the human rights of the people².

Paradoxically, most nationalist suffered unlawful detentions and also have their rights to freedom of expression, fair hearing, peaceful assembly and association,

freedom of thought and conscience and the right to freedom from discrimination violated under the same British rule.

It was therefore not surprising that all the constitutions of Nigeria since independence has all the basic tenets of human rights entrenched in them since 1960.

Chapter II of the 1999 Nigerian Constitution entitled “Fundamental Objectives and Directive Principles of State Policy” was introduced since the promulgation of the 1979 Nigerian Constitution. According to Alemika, this represents an explicit acknowledgment of the ends of the government and the responsibility of the state of the citizens. The terms “Fundamental Objectives” and “directive principle” draw attention to the symbolic and ideological significance of the provisions of which portrays government as a relationship of rights and duty, a social contract between those govern and those who are governed.

The provision range from fundamental obligations of the Government, Relationship between the Government and the People; Political objectives; Economic objectives; Social objectives; Educational objectives; Foreign Policy objectives; Environmental objectives; Directive on Nigerian cultures; Obligation of the Mass Media; National Ethics; to Duties of the Citizens³.

Since the same constitution has made these fundamental objectives and directive principles of state policy non-justiceable by virtue of 6(6) thereof, it has been argued by many that they remain mere ideals which cannot be enforced by the Judiciary. This view has been given has been given judicial approval in Archibishop Olubunmi Okogie (Trustee of Roman Catholic Schools and Ors vAttorney-General of Lagos State where the court in explaining that rationale for

the provisions held that government in developing countries have tended to be pre-occupied with power and its material prerequisites with scant regard for political ideas as how the society can be organized and ruled to the best advantage of all. According to the court, heterogeneity of the society, the increasing gap between the rich and the poor, the growing cleavage between the social grouping all combine to confuse the nation and bedevil the concerted march to orderly progress.

The supreme court invoked item 60 of the exclusive list which confers exclusive powers on the National Assembly to establish and regulate authorities for the Federation or any part thereof, and to promote and enforce the observance of the provisions of chapter II when it read item 60(a) together with section 15(5) of the Constitution and held that the National Assembly has power to legislate on corruption. The implication of this decision is that these “ideals” can become enforceable and therefore justiceable where there is an appropriate legal backing.

In the same vein, since as pointed out earlier, Nigeria has adopted the African Charter into her municipal law, the provisions of the charter are enforceable in the same manner as those of chapter IV of the Constitution provides for the right to life; the right to dignity of human persons; to right to personal liberty; the right to fair hearing; the right to private and family life; the right to freedom of thought, conscience and religion; the right to freedom of expression and the press; the right to peaceful assembly and association; the right to freedom of movement; the right to freedom of discrimination; and the right to acquire and own immovable property anywhere in Nigeria. The provision were virtually the same with corresponding chapter under the 1979 Constitution except the introduction of section 43 relating to the right to acquire and own immovable property anywhere in Nigeria by virtue of the 1999 Constitution⁴.

The enactment of the child's Rights Act, 2003 which implies the fundamental right of a child under the Constitution is a welcome development of human rights in Nigeria.

It is also gratifying to note that Nigeria has ratified the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). CEDAW establishes the universality of the principles of equality men and women and makes provisions for measure to ensure equality of rights for women throughout the world. According to Adewale Taiwo, the "30-article Convention provides a framework for development and application of equality norms to address specific conditions in every country and every legal system. It sets out in legally binding form, internationally accepted principles and measures to achieve equal right for women everywhere".

It is also a rule of customary international law that if a government unjustly and flagrantly represses kits citizens; a foreign government is justified to intervene, on humanitarian grounds, in order to protect the oppressed citizens. The violation of the basic and elementary rights would justify such intervention. These rights include the right to life and the right to liberty.

The Freedom of Information Act, 2011 which has now been passed by the National Assembly and assented to by the President, is designed to address the problem of access to public records by private citizens. This is a potential useful piece of legislation for media establishments. The Act seeks to confer a right on every Nigerian citizen to apply and gain access to any record under the control of a government or public institution. This right is exercisable not withstanding any inconsistency in any other legislation, such as the Official Secrets Acts⁵.

The senate also passed the discrimination Against Persons with Disabilities (Prohibition) Bill 2009 to outlaw discrimination against disabled persons and provides that government and public organizations should provide convenient access for disabled persons to enter and exit premises section on 7 of the Bill provides that “a public building shall be constructed with the necessary accessibility aids such as lifts (where necessary) ramps and any other facility that shall make them accessible and usable to persons with disability.” The Bill has recently through the third reading in the House of Representatives and it is hoped that it will soon receive the assent of the president.

The Adoption of Rights in the Constitution of Nigeria

The rights of the citizens of the Federal Republic of Nigeria are contained in Chapter (II) and (IV) of the Country’s constitution, 1999.

The Fundamental Rights as specified under the 1999 constitution, section 33-44, includes:

Rights to life (section 33)

Right to dignity of human persons (section 34)

Right to personal liberty (section 35)

Right to fair hearing (section 36)

Right to private and family life (section 37)

Right to freedom of thought, conscience and religion (section 38)

Right to freedom of expression and the press (section 39)

Right to peaceful assembly and association (section 40)

Right to freedom of movement (section 41)

Right to freedom from discrimination (section 42)

Right to acquire and own immovable property (section 43)

Right against compulsory acquisition of property (section 44)

Any person can apply to the Court in Nigeria for redress over any allegation that any of the provisions of chapter IV of the Constitution has been in being or is likely to contravened in any state against him.

Also, by virtue of section 6, 12 and 46 of the 1999 Constitution, the human rights under the African Charter on Human and People's Right (Ratification and Enforcement) Act are enforceable by the High Court in Nigeria. Even though the Executive and the legislative have taken pragmatic steps to enforce human rights in Nigeria, the Judiciary has remain the most efficacious institution in the enforcement of rights in Nigeria.

According to Justice Oputa:

“Access to the courts in a necessary adjunct of the rules of law and the effectuation of the rights by the citizens. It underlines the privilege of the few who are rich but should be available to all the citizens of our country. But access to the courts implies the payment of summon fees, the payment for record of proceedings in the case of an appeal. All these are far beyond the reach of the poor and the unemployed who finding justice too expensive resign themselves to the denial of it. One of the best tests of the efficacy of the fundamental rights provisions for our constitution should be whether the rights enshrined therein are accorded to the poor, the employed, the weak, the oppressed and

the defenceless. In theory our constitution in its preamble talks nobly of “promoting the good government and welfare of all persons in our country on the principles of freedom equality and justice.” But in actual practice one sees that it is the powerful, the rich and the dominant class that seem to have all the rights, while the only right left to the poor, the weak and the down trodden seems to be their right to suffer in silence, to be patient and wait for their reward in heaven (if they are believers).^{4”}

Notwithstanding this serious institution, the public hailed the judiciary when the court annulled the deportation order against Alhaji Shugaba Darman and awarded monetary against the Federal Government under the second Republic. The court also prevented the abolition of the private primary and secondary institutions in Lagos State. In *State v. Arthur Nwankwo*, the court held that the law of sedition under the Criminal Code was contrary to section 36 and 41 of the 1979 constitution. The court has also held that a citizen had a right to challenge a violation of the law by government even when no special personal injury is disclosed⁴.

In the words of court:

It would definitely be a source of concern to any tax payer who watches the funds he contributed or is contributing towards running the affairs of the state being wasted when such funds could have been channelled into providing jobs, creating wealth and providing security to the citizens. If such an individual has no sufficient interest of coming to court to enforce the law and to ensure that his tax money is utilized prudently, who else

would have sufficient interest in such manner than him.

History and roles of Nigerian women in constitution making

The first real attempt at constitution making started with the amalgamation of the Southern and Northern protectorates in 1914. The various constitutions saw the creation of Legislative and Executive Councils. Nigeria became independent in 1960 and became a Republic in 1963. This marked the beginning of the First Republic. However, due to political crisis in the West, the military took over power in 1966 and that marked the end of the Republic. There was a counter-coup in July 1966 lasting until 1975 when the federal structure of Nigeria was replaced by a unitary one and the constitution was suspended. Another coup subsequently took place, and from 1975–1979 the Murtala–Obasanjo regime ruled. Obasanjo handed over to a civilian regime led by President Shehu Shagari, and this signified the start of the Second Republic. Shagari ruled for just four years before being overthrown in 1983. This led to the collapse of the Republic. The Third Republic was aborted due to the annulment of the June 12, 1993, elections held by President Ibrahim Babangida. The Fourth Republic started with the adoption of the 1999 constitution by General Abubakar. This is the present constitution, though there have been several constitutional reviews.

Nigerian women held important positions in their communities before the advent of colonial rule: in the Oyo Empire, women were the Iya Oba, Iya Kere, Iyalagbon and Iyalode. The Hausas were characterised by matrilineal succession in the ruling class and the females held high political office: Queen Amina of Zaria, for instance, succeeded her father, conquered the neighbouring towns and dominated these regions for 34 years. In Igboland, females formed market and

village groups and, through their representatives, discussed issues affecting them at village meetings. This scenario changed during the colonial period: from 1914 to the end of the First Republic in 1963, women were excluded from constitution making and were not allowed to vote. The Clifford constitution of 1922 restricted the electorate to adult males in Calabar and Lagos who had been resident in the city for at least one year and had a gross annual income of 100 Naira (50 US cents)⁵. The Richards constitution of 1946 reduced the required income to N50.00 (25 cents). The Macpherson constitution removed the property qualification, but still restricted the electorate to only adult males who paid their taxes. By the Lyttleton constitution of 1954, franchise was universal in the East and West, but was limited to adult males in the North. Apart from a few women who attended constitutional conferences in the United Kingdom towards the period of independence, constitution making was the prerogative of males until the end of the First Republic in 1963.

The Second Republic 1979–1983 saw the constitution-making process beginning in 1975, when the military government of General Muritala Mohammed set up a Constitution Drafting Committee made up of 50 appointed members – all men. However, it was during this period that the ground for non-discrimination on the basis of sex was included in the 1979 constitution. During the aborted Third Republic 1983–1998 some constitution-making processes did take place, but there were only five women among the 150 members of the Constituent Assembly that drafted the 1989 constitution. In 1994, General Sanni Abacha inaugurated the Constitutional Conference comprising about 360 members, only five of whom were women.

In preparation for the Fourth Republic in 1998, Abdusalami Abubakar inaugurated

the Constitutional Debating Committee which featured no women. It took the intervention of the National Council of Women Societies (led by Hajia Zainab Minna) who protested their exclusion, for four women to be included on the committee. However, representations by women on issues affecting them were disregarded. The military structure is largely monolithic, therefore women's issues were not accorded any significant recognition during those periods.

In the present Fourth Republic, the first major active participation by women came with the call for memoranda by the Presidential Technical Committee (PTCRC) on the review of the 1999 constitution. The National Centre for Women Development invited a team of experts to review the constitution. Their recommendations on engendering the constitution were further subjected to debates by civil society, including gender activists, private individuals and women politicians. For the first time, a position paper by women, on the 1999 constitution, was presented to the PTCRC. In the late President Yaradua's Electoral Reform Committee (ERC) there were only three women among the 23 members. In 2011, President Jonathan included only three women in the Justice Belgore Constitution Review Committee. The overarching implication of the underrepresentation of women in constitution-making processes, is that issues of concern – such as the preamble, the language of the constitution, as well as women's rights, amongst others – were pushed to the background. Some of these issues are considered in the next section, particularly the effect of these provisions on the life experiences of women in Nigeria.

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CHAPTER THREE

Women's Political Participation in Pre-colonial Nigeria

As can be expected from the structure of the country at this time, the general position of women differed according to the cultural orientation of an ethnic group or region. The positions varied according to- “kinship structure and their role within the economic structure of the society“. Traditionally, women assumed particular roles as mothers and caregivers¹. In some cases, although religion or practices did provide various means of controlling women and dictating their lifestyles, nonetheless, in many ways the society at that time still conceived them as complementary to men rather than subordinates². Power in the society was mostly based on seniority rather than gender. Many other areas of traditional culture, including personal dress and adornment, religious ceremonials, and intragender patterns of comportment, suggests that Africa at this time often deemphasized gender in relation to seniority and other insignia of status”. At this time, women were not as inactive as they are made out to be today, they contributed immensely in the agricultural sector and in local and long distance trade³. Socially they contributed in the sustenance of the kin groups, they were prominent in the provision of health care; they also participated effectively in the administration of the states or the kingdoms.

Current Status of Women in Politics

The 1979 Nigerian constitution guaranteed the rights of women to participate in active politics; however, the last decade has witnessed a relative increase in women’s participation. This is only when we measure increase in

participation with certain standards like the number of women who vote in elections; the number of public offices held by women; number of women related policies implemented by government etc. Over the years, there has been a remarkable increase in women's participation in politics in Nigeria considering these standards, yet there is inherently a pronounced level of under-representation of women in politics when compared with their male counterparts⁴.

Women's aspiration to participate in governance is premised on the following ground; that women in Nigeria represent half of the population and hence should be allowed a fair share in decision-making and the governance of the country. Secondly that all human beings are equal and women possess the same rights as men to participate in governance and public life. The right to democratic governance is an entitlement conferred upon all citizens by law. The 1999 Nigerian constitution by virtue of Section 40 states the following:

Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests: Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.

Section 42(1) of the same constitution states further that:

A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person be subjected to any form of discrimination⁵.

This further confirms that you can go to court to seek redress if as a woman your franchise is violated and that the constitution as a whole prohibits discrimination on the basis of sex. Section 77 of the Constitution also states:

Subject to the provisions of this Constitution, every Senatorial district or Federal constituency established in accordance with the provisions of this Part of this Chapter shall return a member who shall be directly elected to the Senate or the House of Representatives in such manner as may be prescribed by an act of the National Assembly. (2) Every citizen of Nigeria, who has attained the age of eighteen years residing in Nigeria at the time of the registration of voters for purposes of election to a legislative house, shall be entitled to be registered as a voter for that election⁶.

From the foregoing, it appears that there is nothing in the constitution, which excludes the participation of women in politics in Nigeria. Yet when it comes to actual practice, there is extensive discrimination. Few and almost insignificant number of women were elected into various posts in the 1999, 2003 and 2007 general elections held in the country. Men dominate most public offices till date. Female gubernatorial candidates have emerged but none has ever won and same goes for the Presidency. Legislative representation has witnessed the presence of women yet they remain under-represented when compared to their male counterparts.

Following two decades of military rule statistics reveal that women only secured 3% representation in contested positions in 1999, 4% in 2003, while in 2007 they made with only 6%. Few and almost insignificant number of women were elected into various posts in past three general elections held in the country between 1999 and 2007. The result of the survey shows that no woman was elected as governor of any state in the federation. We only had few women as members of Houses of Assembly across the country and as members of the upper house (Senate) and lower house (House of Representative) of the National Assembly.

This survey shows a poor representation of women in the 1999, 2003 and 2007 elections. In 2003 in States like Adamawa, Cross River, Ebonyi, Jigawa, Kano, Katsina, Kebbi, Nasarawa, Oyo, Sokoto, Yobe and Zamfara, no woman was elected as member of the State House of Assembly. In states where women were elected as members of House of Assembly, they were very few⁴.

According to the figures collated from the database of the Independent National Electoral Commission (INEC), records shows that a total 7160 candidates (men and women) contested in the April elections. Of this number, only 628 women participated. Out of the 25 candidates that participated for the office of the President, only 1 is a woman while 5 women contested for the office of the Vice President.

Gender Equality in the Nigerian Constitution

The principle of imputing gender equality into the constitution has a historical basis. It seeks to cure the defects of the past, by promoting women who have been unjustly treated to date, in legal contemplation, to the level of men. Mackinnon rightly asserts that stipulating gender paves the way for inequality; constitutions should not reinforce this, but rather include equality provisions. The only provision akin to stating equality in the Nigerian constitution is the preamble, which states that ‘the purpose of the constitution is to promote good government and welfare of all persons in the country on the principles of Freedom, Equality and Justice’. Arguably, this is very vague and sketchy, and has never been interpreted as forming the basis for equality for women⁷. Osipitan relates it to autochthony of the Nigerian constitution. In the same vein, Chapter II provides that every citizen shall have equality of rights, obligations and opportunities before

the law. As will become evident in this article, this section remains unenforceable.

This is in contradistinction to the norm in other jurisdictions which follow a substantive approach to equality provisions. Article 3(2) of the German Basic Laws provides for equality before the law. Thus, the 'state shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist'. Mackinnon (2012) states that the aim is to overcome traditional male domination over women, as the substance of gender hierarchy is identified and addressed in the text. There is equality of rights under the Canadian constitution: Section 15(1) states that 'every person is equal before the law ... has the right to equal protection ... any discrimination based on sex ... subsection (1) does not preclude any law, programme or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of sex...'¹⁵ Most likely because of the country's apartheid history, the South African constitution contains very elaborate provisions on equality.

Nigeria consists of 36 states, of which only three have passed the Gender and Equal Opportunities Commission Laws: Imo and Anambra States in 2007, while Ekiti State restyled it as the Gender and Equal Opportunity Law in 2013. Similarly, the Gender and Equal Opportunities Bill, 2010, has been proposed at the Lagos State House of Assembly. Plateau State Assembly has been working to establish a Commission for Gender Equality⁸. These are all steps in the right direction. However, the crucial starting point is to adopt a substantive approach to equality provisions, as shown in the above jurisdictions. It will be weightier because the constitution is the organic law, and commission laws will contain several other provisions stating further opportunities for women.

Section 42 of the 1999 Nigerian constitution provides for non-discrimination on the grounds of sex. This is unlike the South African constitution, which prohibits discrimination on the grounds of both sex and gender. While sex may denote biological differences and is very limited, gender is broader, since it denotes the social construct of roles. The only elaboration on the meaning of discrimination in the Nigerian constitution is ‘not being subjected to any disability or restriction or accorded any privilege or advantage’. Generally, discrimination is the overt or subtle devaluing of an individual or group. This phenomenon is pervasive, as it affects all members of that group, covers all aspects of human life, and is infinite in its variations and applications. Though the National Conference recommended the widening of non-discrimination to cover gender, non-discrimination on the ground of sex is unobserved in Nigeria. Women are unashamedly subjected to being undervalued in all strata of life. In particular, this article focuses on discrimination in the areas of citizenship and property rights. Pertaining to citizenship rights; the first observation is that Section 26 of the constitution allows foreign wives of Nigerian men ‘to register as citizens of Nigeria’. It is, however, silent on the status of foreign men who are married to Nigerian women. The gender bias of this provision was manifested with the deportation from Nigeria of Dr. Patrick Wilmot, a Jamaican, during Babangida’s administration, notwithstanding the fact that his wife hails from Sokoto State. The National Conference 2014 rightly proposes that section 26(2) (a) of the Nigerian constitution be amended to read ‘any person who is or has been married to a citizen of Nigeria’ can be granted citizenship by registration. This will cover male and female spouses⁸.

Second, Section 29(2) (4) (b) provides that any woman who is married shall be

deemed to be of full age. Subsection (2) (a) prescribes full age to be 18 years and above. This provision silently supports child marriages, as it out rightly confers ‘full age’ on every married woman. According to Atsenuwa, the constitution is able to take such a stance because it does not confer capacity on girls, deeming capacity irrelevant because girls have no choice in the decision making. A husband is tacitly appointed a girl’s *guardian ad litem*, allowing his will to be superimposed on hers, without question. In 2013, the Nigerian National Assembly attempted to amend this part of the constitution so that 18 years will be the age of maturity for all purposes. However, it failed to obtain the requisite two-thirds support of its members. The majority chose to maintain the status quo, thereby allowing the girl-child to continuously face the socio-medical consequences of early marriage. The National Conference 2014 resolves that section 29(4) (a and b) should be harmonised to ensure full age is 18 years and above⁸.

Third, the Nigerian constitution confers citizenship on the premise of belonging to an indigenous community. There are no clear-cut definitions on concepts such as ‘natives’, ‘indigenes’ or ‘settlers’.¹⁹ This lacuna has further exposed Nigerian women to inequality. One of the areas that needs immediate clarification, is the indigeneity of women in inter-ethnic marriages. While some argue that women retain whatever indigeneity they laid claim to prior to marriage, others contend that women, upon marriage, derive their indigeneity from their husbands. The provision in the Federal Character Commission is further confusing, as it states that ‘a married woman shall continue to lay claim to her state of origin for the purposes of implementation of the federal character formulae at the national level’. Recently, Justice Ifeoma Jombo-Ofo, an indigene of Anambra State, married a man from Abia State (both located in Eastern Nigeria)⁹. She transferred

her service from Anambra State due to her marriage, having served in the Abia State judiciary for 14 years. However, the Chief Justice of Nigeria (CJN) refused to swear her in as a Court of Appeal judge on the platform of Abia State on the premise that it amounted to a breach of Federal Character, as it affects the state of origin of married women. Though she was eventually cleared by the National Judicial Council and sworn in, the scenario was highly embarrassing. Jombo-Ofo's years of meritorious service in Abia State were not even a bone of contention – she simply was not considered capable of filling the Abia State slot because she was not an indigene of that state.

Anambra State attempted to provide a solution by providing for the right to choose indigeneship. This is a welcome development, but a drop in the ocean as the remaining 35 states in Nigeria may never have such a provision. The National Conference 2014 emphatically states that a woman shall be constitutionally allowed to enjoy the indigeneship of her place of origin (birth) or that of her husband (place of marriage).

A ray of light emerged with two recent Supreme Court judgements on the property and inheritance rights of women. The court made decisive pronouncements on issues of discrimination against women. The first case was *Lois Chituru Ukeje v Gladys Ukeje*. The respondent sued the applicants (wife and son) at the High Court, claiming that as one of the children of the deceased, she was amongst those who should administer his estate. The court found she was a daughter of the deceased and the Court of Appeal upheld the decision. The Supreme Court agreed with both courts and voided the Igbo native law and custom which disentitles female children. Justice Rhodes Vivour, who read the lead judgement, succinctly stated:

No matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father's estate. Consequently, the Igbo customary law, which disentitles a female child from partaking in the sharing of her deceased father's estate, is in breach of Section 42

(1) and (2) of the Constitution, a fundamental rights provision guaranteed to every Nigerian. The said discriminatory customary law is void and it conflicts with Section 42 (1) and (2) of the Constitution.

In the second case, *Onyibor Anekwe v Maria Nweke*,¹⁰ the Supreme Court, in dismissing the appeal, strongly canvassed:

The custom and practices of Awka people upon which the appellants have relied for their counter claim is hereby out rightly condemned in strong terms ... It is punitive, uncivilized and only intended to protect the selfish perpetration of male dominance which is aimed at suppressing the right of women folk in the given society ... Any culture that disinherits a daughter from her father's estate or a wife from her husband's property by reason of God instituted gender differential should be punitively and decisively dealt with ... For a widow of a man to be thrown out of her matrimonial home, where she had lived all her life with her late husband and children, by her late husband's brothers on the ground that she had no male child is indeed very barbaric, worrying and flesh skinning...

These decisions are timely and apposite in a changing world poised to address imbalances. But Oni is wary of the practicability and enforceability of the judgements. According to him, the Igbo customary practices of disinheriting widows and daughters are deeply entrenched. He rightly suggests that the government in those states practising this culture should seriously enforce the

judgements; state laws on inheritance should be amended and traditional rulers/heads of family who continue to perpetuate the custom should be sanctioned, to the extent of being removed. In the writer's view, there is a need to raise awareness of the negative impact this custom has on women, as well as of the need for change.

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CHAPTER FOUR

Women's Rights and the 1963 Constitution

The 1963 Constitution

The First Republic was the republican government of Nigeria between 1963 and 1966 governed by the first republican constitution. The country's government was based on a federal Westminster system¹. The period between October 1, 1960, when the country gained its independence and January 15, 1966, when the first military coup d'état took place, is also generally referred to as the First Republic. The first Republic of Nigeria was ruled by different leaders representing their regions as premiers in a federation during this period².

Although Nigeria gained independence from the United Kingdom on 1 October 1960, the nation retained the British monarch, Elizabeth II, as titular head of state until the adoption of a new constitution in 1963 declaring the nation a republic. The Westminster system of government was retained, and thus the President's powers were generally ceremonial³.

The name "Nigeria" is derived from the word "Niger" – the name of the river that constitutes the most remarkable geographical feature of the country. Nigeria is a country of 923,768 square kilometres (356,669 sq mi), bound to the west by Benin Republic, to the north by the Niger and Chad Republic, east by the Republic of Cameroon, and south by the Gulf of Guinea. The

country gained independence from the British government on 1 October 1960, and became a republic in 1963. The journey to independence started with some constitutional developments in Nigeria. These constitutional developments saw the country attaining self-rule in some quarters in 1957 and total independence on 1 October 1960⁵.

The 1979 Constitution

Under the Nigerian constitution of 1979, voting rights, or the right to register as a voter, were extended to all citizens of Nigeria who resided in Nigeria at the time of voter registration. Though the previous general elections only involved the election of members into legislative bodies, the 1979 Constitution provided for the election of the President and Vice-President by those granted the ability to vote in legislative elections.

Female suffrage was initially granted with regional specificity. In the Igbo-dominated eastern region and the Yoruba-dominated western region, women were allowed the right to vote in 1954. Though the Elections (House of Representatives) Regulations of 1958 standardized the federal distribution of voting rights across the nation, women in the northern region remained unable to vote until the late 70s. Universal suffrage was achieved finally in 1979 when women in northern states were granted the right to vote⁶.

Nigeria was engaged involved in a broader West African debate about the role of women in electoral processes. Under pressure from parties such as

the Women's Movement of Nigeria (WM) and the women wing of the Action Group (AG), British government and Nigerian underwent a series of constitutional conferences in order to ascertain the methods through which elections would be framed post-British colonization. The Lyttelton Constitution of 1954 afforded tax-paying Southern Nigerian women the right to vote and to be elected. However, due to the fact that many women did not pay taxes, the female electoral base was extremely limited. The WM, notably including its president Elizabeth Adekogbe, argued for universal suffrage excluding the tax requirement in order to expand the number of women able to contribute to the electoral process by voting or running for office. Only after the military coups of 1966-1978 was true universal suffrage granted under the 1979 Constitution of Nigeria.

The 1999 Constitution

The Constitution of the Federal Republic of Nigeria 1999 forms the basis of the rights inherent in every citizen. The constitution grants inherent fundamental human rights such as the right to life, fair-hearing, personal dignity. In applying international laws and treaties relating to the human rights of women in Nigeria, the Constitution is the primary source of law, because it is the ground norms where other laws derived their existence and any law that is inconsistent with the Constitution, shall be void to the extent of its inconsistency. The Constitution as the supreme law of the land⁸⁸ allows a system whereby international laws and treaties ratified and adopted into law by the parliament becomes part of the accepted law of the land.

Problems occur however because many of the states in the country have not adopted and passed into law, most of the treaties and covenants ratified by the country.

Also, the federal government is yet to domesticate some international treaties it has ratified. However, the Constitution empowers the National Industrial Court of Nigeria (NICN) to use ratified treaties in ensuring Nigeria meets up with international labour practices in matters related to or incidental to labour or human rights in the workplace⁷.

The Nigerian Constitution in protecting the human rights of the people divides them into civil and political, as well as socio-economic rights.⁹³ The distinction lies in their justiciability i.e., while the civil and political rights are justiciable, socio-economic rights are not, but are acknowledged as Fundamental Objectives and Directive Principles of State Policy⁸. It is noteworthy that women's right is a basic and integral part of those human rights which are difficult and problematic to enforce in Nigeria⁹. For example, right to health, education and social amenities such as roads, water, light etc. that can improve their economic life. Corroboratively, the Court held that the provisions of Chapter II of the Constitution are not obligatory on the government. As such, it has been difficult to assert salient basic rights of women in Nigeria.

The Constitution prohibits any form of restriction or discrimination on the bases of ethnicity, sex, religion or political opinion. However, the rights of women are usually trampled upon in various family, labour/employment and customary law and practices. Issues surrounding succession rights, right

to work, widowhood, education, political and civil rights, betrothal and marriages, have often constituted areas of discrimination for women in Nigeria. Most cultures in Nigeria do not uphold the rights as accorded to women by international instruments and local laws including the constitution of Nigeria¹⁰.

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CHAPTER FIVE

Summary

From the foregoing the current state of the Rights of Women in Nigeria is in dire straits. There is clearly no political will on the part of government at all levels to address the issues of women rights. In my opinion, Nigeria is not in short supply of laws that guarantee the rights of women. How many of them know about these laws and have the capacity to ensure that these rights are enforced? This is one of the great challenges facing the Nigerian woman.

The concept of women's right *vis-a-vis* prevailing and anachronistic practices need to be better understood in the light of international standards and expectations. The customary rules of some major ethnic groups have been discussed and their shortcomings analysed. It has been pointed out that these discriminatory practices are against the letter and spirit of various laws such as the constitution, the African Charter on Human and Peoples Right and the Convention on the Elimination of all forms of Discrimination against Women and that discriminatory rules should not be made to thrive in the 21st century.

Having looked specifically at some cultural and other practices that affect the enjoyment of fundamental human rights of women among certain groups of Nigeria, the most affected rights of women are their rights to human dignity, their right to life and their right to personal liberty. Even though the courts have declared some customary practices against women void and

aside the promulgation of laws that will effectually abrogate such discriminatory customs, these practices should be criminalized.

Conclusion

Feminism developed as a result of the discrimination between the men and the women. The movement does not propose that women be accorded a higher position than men but, that women be treated equally as men. However, in the current world some women who identify with the feminist movement have struggled not for equality but aim for superiority as they believe it is a revenge for being side-lined far too long. To achieve the aim of feminism, there is a need to demilitarise masculinity either by affirmative action or through the suppression of the customs that aid masculinity domination. Feminism should not just be centred on the advocacy for improvement of women alone but should align with the UN's standard which is equality for women and men. Nigerian feminist movement must identify that not only women suffer prejudices, but that men are also victims of the social and legal lapses caused by the society's restricted protection.

Government, individuals and international bodies should openly support the feminist movement in the struggle for equality. It should be noted that the movement has influenced and improved the standard and enjoyment of human rights, hence, feminist should not be regarded as 'men haters' as the movement is also opened to men who will align with the basic principles of each section of the movement. It has been clearly stated that

both genders suffer various types of prejudice thus, and as such people should be treated based on individuality, merit and not gender views.

In order to change the orientation of the society towards women, the researchers recommend a revisit and review of some national legal provisions like the customary laws, Penal code law and Sharia laws that directly and indirectly violate the rights of women. Also, necessary measure should be put in place by the government in order to see that all national laws are in agreement with international instruments ratified in relations to protection of women's rights. Women organizations regulatory and non-governmental bodies should sensitize people on the purpose of feminism to avoid the abuse and or misconstruction of the concept. Government can as well work hand-inhand with the community heads and religious leaders to see that barbaric cultures and customs are absolutely prohibited from the society through diverse educational methods, such as, organizing seminars, workshops, and training etc. Women need to be educated of their basic rights in order to break the barricade of ignorance and silence when such rights are violated and to encourage them to seek redress through appropriate means.

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